

REMARKS / ARGUMENTS

1. Retraction of Previous Arguments

In light of *Hakim v. Canon Avent Group PLC*, 479 F.3d 313, 81 U.S.P.Q.2d (BNA) 1900 (Fed. Cir. 2007) and the unfavorable treatment given this application even though claims 18 – 20 were canceled at the Office's suggestion, Assignee hereby retracts and expressly disavows all arguments made in the application prior to this Amendment.

2. Response to February 1, 2008 Office Action

For the convenience of the Examiner and clarity of purpose, Assignee has reprinted the substance of the Office Action in ***10-point bolded and italicized font***. Assignee's arguments immediately follow in regular font.

This application contains claims directed to the following patentably distinct species:

I. A system as claimed wherein the monitored apparatus is an Uninterruptible power supply (UPS) - see claims 11 and 16.

II. A system as claimed wherein the monitored apparatus is a detection device selected from the group consisting of a smoke alarm, a burglar alarm, a fire detector, water detector, or an unauthorized access detector - see claims 12 and 17.

The species are independent or distinct because they have separate utility. A system as claimed could only monitor an apparatus that is a UPS and not monitor any apparatus that is a detection device. Alternatively, a system as claimed could only monitor an apparatus that is a detection device and not monitor any apparatus that is a UPS. See paragraph 17 of specification where the applicants describe how the claimed system can be used to monitor only UPS devices or only detection devices or both together. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In one set of claims, the monitored apparatus is a UPS and in the others the monitored apparatus is a detection

device. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. In this case, the search for the species where the monitored apparatus is a detection device would require searching in class 340, particularly the subclasses related to Condition Responsive Indication Systems (500+) while the search for the species where the monitored apparatus is a UPS would not. The search for the species where the monitored apparatus is a UPS would require searching class 307, particularly the subclasses related to substitute or emergency (power) sources (subclasses 64 and 66). while the search for the species where the monitored apparatus is a detection device would not.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Without regard to the propriety of this restriction, Assignee hereby elects to prosecute claims directed to Species I as described above. Assignee identifies pending claims 1 – 11, 13 – 16 and 21 – 26 as encompassing the elected species. In light of the election of Species I, claims 12 and 17 have been withdrawn.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached,, or any other comments:

On September 19, 2006, Andrew Caldwell faxed the applicants' attorney, Mark Gleason, a proposed amendment that Examiner Caldwell believed would place the application in condition for allowance. See attached. Mr. Gleason arranged for an interview

between Examiner Caldwell and Albert Deaver on September 26, 2006. In the interview, the proposed amendment and the references identified thereon were discussed. Mr. Deaver agreed to present the proposed amendment to his client for consideration. On October 24, 2006, Mr. Deaver indicated that, at this time, his client was not willing to accept the proposed indication of allowable subject matter .

The Office's characterization presented above is generally accurate. Further, the Office's proposed claims, while clearly patentable over the art discussed, were too narrow in overall scope and did not adequately protect the patentable subject matter disclosed in the application.

3. Other Claim Amendments

Assignee has chosen to amend claims 10 and 13 - 15 to more particularly point out and distinctly claim what Assignee desires to protect with this patent. These amendments may or may not be narrowing in scope and are not being made for patentability reasons.

4. New Claims 21 - 26

New claims 21 – 26 are presented herein and encompass the elected species. Support may be found in the original claims and throughout the specification.

5. Conclusion

Claims 1 – 11, 13 – 16 and 21 - 26 are currently pending in this application, with claims 12 and 17 being withdrawn, and claims 18 - 20 being canceled.

Claims 10, 13, 14 and 15 have been amended herein and Assignee submits that each claim presented herein is patentable. A timely notice of allowance is respectfully requested.

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Amdt. Dated 03/03/2008
Reply to Office Action of 02/01/2008

Assignee thanks the Examiner for his consideration and effort on this file, but notes that this file has been pending for just over six (6) years. Timely reconsideration is earnestly requested.

If there are any questions or if additional information is needed, the Examiner is invited to telephone or email the undersigned.

Respectfully submitted,

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